

CONSERVATION/TRESPASS ORDINANCE

HOOPA VALLEY TRIBE
Hoopa, California

Title 15

Ordinance No: 3-89

Date Approved: November 16, 1989 as amended November 3, 1999

Subject: CONSERVATION/TRESPASS ACT OF THE HOOPA VALLEY TRIBE

WHEREAS: The Hoopa Valley Tribe did on June 20, 1972, adopt a Constitution and By-Laws which was approved by the Commissioner of Indian Affairs on August 18, 1972, and Article IX, Section 1(e) of this Constitution and Bylaws authorized the Hoopa Valley Tribal Council, "To enforce the protection of tribal property, wildlife, and natural resources of the Hoopa Valley Tribe in accordance with a conservation ordinance...",

WHEREAS: That this Conservation/Trespass Act is consistent with the objectives of the Hoopa Valley Tribe and Federal Government to further the goal of self-determination through the enforcement of tribal laws intended to strengthen the Tribe's authority over all tribal affairs, and

NOW, THEREFORE BE IT RESOLVED: That the Hoopa Valley Tribal Council hereby enacts the Conservation/Trespass Act of the Hoopa Valley Tribe under its authority contained in the Constitution as Title 15 of the Law and Order Code of the Hoopa Valley Tribe, and the Use Permit Ordinance, No. 1-88 approved February 8, 1988, shall be made part of this Act, and that this act shall be in full force and effect.

15.0 SHORT TITLE

The short title for this Act shall be the Conservation/Trespass Act of the Hoopa Valley Tribe.

15.1 PURPOSE

The purpose of this Act is to protect the interest of the members of the Hoopa Valley Tribe, ensure proper management of Reservation resources, and to prevent unauthorized exploitation of unallotted tribal natural resources within the exterior boundaries of the Hoopa Valley Indian Reservation (hereinafter "Reservation"). This Act further regulates the use of Reservation resources in order to insure their continual

availability to members of the Hoopa Valley Tribe, and to protect such resources from unauthorized exploitation or otherwise illegal use.

15.2 PRIOR ORDINANCES AND POLICIES REPEALED

Any prior ordinances and policies are repealed to the extent that they are inconsistent with this Act.

15.3 HOOPA VALLEY INDIAN RESERVATION CLOSED

Except as provided in existing legal rights-of-way and federal laws, all parts, territories, roads and streams on unallotted land and properties within the exterior boundaries of the Hoopa Valley Indian Reservation, including, but not limited to tribal ceremonial and religious grounds, are hereby closed to use and access by any person who is not a member of the Hoopa Valley Tribe. A non-member may accompany a tribal member into a closed area provided, however, that the non-member has first obtained a permit as provided under this Act and that the accompanying tribal member(s) accepts full responsibility for the actions of the non-member. This allowance is not a recognition or granting of Reservation or tribal rights to any non-member and such allowance is intended solely for the convenience of the tribal member, and this privilege does not exempt the non-member from prosecution under appropriate tribal, federal or state law. All unallotted lands, territories and areas within the exterior boundaries of the Hoopa Valley Indian Reservation are closed to hunting by any person who is not a member of the Hoopa Valley Tribe. All tributary streams to the Trinity river and that portion of Pine Creek within the exterior boundaries of the Hoopa Valley Indian Reservation are closed to fishing by any person who is not a member of the Hoopa Valley Tribe. All unallotted natural resources are reaffirmed to be for the exclusive benefit of members of the Hoopa Valley Tribe.

15.4 ESTABLISHMENT OF PERMIT SYSTEM

15.4.1 Permit System

It is hereby authorized that a tribal permit system be established. Such permits may be issued to members of the Hoopa Valley Tribe and to non-members of the Hoopa Valley Tribe and may include conditions under which the permit can be used, and such conditions shall be enforceable under this Act.

15.4.2 Membership Identification Cards

Except as otherwise provided in this Act, Hoopa Tribal members holding a valid identification card issued under the authority of the Hoopa Valley Tribal Council shall be deemed permitted under this Act. However, activities authorized by the Membership Identification Card may be suspended or revoked if used in violation of this Act. For enforcement purposes, a Membership Identification Card shall be considered a permit under this act.

15.4.3 Special Wood and Gravel Permits Required

Any person, including enrolled members, are required to obtain special permits prior to cutting wood and removing gravel and post and pole material under this Act. Special permits may include conditions under which the permit remains valid.

15.4.4 Tribal Employees

Each employee of the Hoopa Valley Tribe shall be issued an identification card by the Tribal Personnel Department. Each employee identification card shall remain the property of the Tribe and shall be relinquished by the holder upon demand of the Tribal Chairman or his authorized representative.

15.5 PERMITS REQUIRED

Every person found to be on allotted lands within the exterior boundaries of the Hoopa Valley Indian Reservation is required to have in their possession a valid permit as provided under this Act. Any person not in possession of an official Tribal permit shall be considered in violation of this and other applicable Tribal and Federal laws.

15.6 PERSONS NOT KNOWN TO BE HOOPA MEMBERS

Any person not known by an Officer of the Tribe to be a member of the Hoopa Valley Tribe, or any person not having in their possession a valid Hoopa membership card, shall be presumed not to be a member of the Hoopa Valley Tribe.

15.7 TYPES OF PERMITS

15.7.1 Personal Use Permits

Personal Use Permits may be issued solely to enrolled members and are expressly limited for the legitimate personal use of resources allowed under the permit and shall not be used for barter, sale or any other activity that can be interpreted as to

increase the personal commercial gain to the person to whom a tribal use permit is issued.

15.7.2 Fee Permits

Fee Permits may be issued to any person and are expressly limited for the legitimate personal use of resources allowed under the permit and shall not be used for barter, sale or any other activity that can be interpreted as to increase the personal commercial gain to the person to whom a tribal use permit is issued. The cost of Fee Permits shall be established as provided by a resolution approved by the Tribal Council and the revenues generated by fee permits shall be used to enforce this Act.

15.8 LIMITATIONS OF AUTHORIZATION

15.8.1 Activities of Tribal Government

Activities of the Tribal Government or its subordinate entities shall be exempt from the requirements of this Act and shall be governed pursuant to management plans and applicable laws regulating such activities. Tribal employees whose duties require activities involving Tribal resources are exempt from obtaining a permit under this Act while they are performing duties in their official capacity.

15.8.2 Permits Not Exemption From Laws

Possession of a permit issued under this Act does not exempt any person from any applicable laws or authorize any activity on property other than unallotted tribal lands or allow access to any resources not authorized by the permit.

15.8.3 Sensitive Resources

Except as specifically authorized by the Hoopa Valley Tribal Council, no permits shall be issued under this Act for resources that have a substantial cultural and/or ceremonial value to the Hoopa Valley Tribe or resources that are considered scarce or fragile in nature.

15.9 APPLICATION PROCESS - ISSUING AGENT - RECORDKEEPING

15.9.1 Issuing Agent

The Issuing Agent is the person responsible for issuing permits as provided by this Act and shall be the Chairperson of

the Hoopa Valley Tribal Council, or their authorized representative. Any person requesting a permit shall apply in person during regular business hours.

15.9.2 Evaluation By Issuing Agent

As soon as reasonably possible after application for a permit is made, the Issuing Agent shall evaluate the application in light of the factors set forth in Section 15.10 below, and approve or deny the application; except that where the evaluation shows that the resources sought to be used under the permit have substantial cultural and/or ceremonial value, or are scarce or fragile, the Issuing Agent shall forward the application, with a written recommendation for action to the Hoopa Valley Tribal Council for a decision, pursuant to Section 15.8 above.

15.9.3 Evaluation, Issuance, Denial of Permit

The Issuing Agent (or Hoopa Valley Tribal Council if the application is evaluated pursuant to Section 15.8) shall set the terms and conditions of the Use Permit in writing, including the expiration date, based on consideration of the factors set forth in Section 15.10 below. Any denial of an application shall be supported by a brief written statement of reasons based on the factors in Section 15.10 below. Any denial of a permit may be appealed pursuant to Section 15.16 below.

15.10 FACTORS FOR ISSUING PERMITS

In determining whether to issue a permit, and the nature of any terms and conditions thereof, the Issuing Agent shall consider the following factors:

15.10.1

Whether a sufficient quantity of the resource in question is available and accessible on the Reservation.

15.10.2

That there is neither a conservation nor allocation problem, nor any conflict between the resource use applied for and traditional, aboriginal family use areas or traditional cultural and/or ceremonial uses. If such concern or conflict is found to exist, the application shall be forwarded to the Hoopa Valley Tribal Council for decision pursuant to Section 15.8 above.

15.10.3

Whether the applicant had been in non-compliance with the terms and conditions of a previous permit or has ever had a permit revoked.

15.10.4

Whether the resource in question is governed by an approved management plan that authorizes such activity.

15.10.5

The location of the applicant's residence and whether the resource in question may be available and accessible in a larger quantities in other areas.

15.10.6

Whether the resource allowed under the permit is intended to promote the personal economic or monetary gain of the applicant.

15.10.7

Whether the applicant intends to transport the resource in question outside the exterior boundaries of the Reservation.

15.11 OFF-RESERVATION TRANSPORT

Every person, including Hoopa Tribal members holding valid identification cards, shall be required to obtain approval prior to transporting any Reservation resource beyond the exterior boundaries of the Hoopa Valley Indian Reservation. Permits issued under this Act may be used as a transportation permit, provided it contains clear authorizing language and such transport has been approved by the Issuing Agent.

15.12 INVALIDATION OF PERMIT

Any permit issued under this Act shall become immediately invalid for reasons including, but not limited to, the following:

15.12.1

If any resources utilized under the permit are used for barter or commercial purposes.

15.12.2

If any person in their application for a permit gives false information.

15.12.3

If any changes are made to a permit after it has been issued.

15.12.4

If a person violates any terms or conditions of a permit.

15.12.5

If the expiration date on the permit has expired.

15.13 SUSPENSION, REVISIONS AND TERMINATION OF PERMIT

Once a permit has been issued, it may be suspended, revised or terminated by the Issuing Agent or by a Tribal Court Judge based upon evidence which indicates that the continuation of such permit, or a permit in its present form, has been violated, or is a threat to any person or to the resources of the Reservation, or has been used in connection with an illegal activity. Any enforcement officer of the Hoopa Valley Tribe shall have the authority to temporarily suspend a permit if they find that if allowed to continue, such activity will threaten the health and safety of any person or the resources of the Reservation.

15.14 SEIZURE/CONFISCATION OF PROPERTY

15.14.1 Seizure of Resources

a) Any natural resources, or products of natural resources that are in the possession of, or being transported by any person not having in his/her possession a permit issued under this Act shall be presumed to have taken such resources illegally from unallotted tribal lands or territories of the Reservation and such natural resources are subject to immediate seizure by an authorized officer of the Tribe. Persons transporting private property within the exterior boundaries of the Reservation are responsible for obtaining a permit from the legal property owner before transporting any natural resources, or products of natural resources, on any unallotted Reservation lands or any roadways within the exterior boundaries of the Hoopa Valley Reservation.

b) Seizure of natural resources within the exterior boundaries of the Hoopa Valley Reservation, including Indian forest products, shall be in accordance with 25 Code of Federal Regulations, Section 163.29(e).

c) When there is reason to believe that Indian forest products are involved in trespass and that such products have been removed to land not under federal or tribal government supervision, the responsible Tribal official shall provide notice to the owner of the land or the party in possession of the trespass products in accordance with 25 Code of Federal Regulations, Section 163.29(f).

15.14.2 Confiscation of Property

In accordance with 25 Code of Federal Regulations, Section 163.29(e), any authorized enforcement officer of the Tribe, or the Tribal Court Judge, is authorized to confiscate any private property used in the commission of a violation of this Act.

15.15 ENFORCEMENT

15.15.1 Tribal Police/Court Jurisdiction

Enforcement of this Act and permits issued under it shall be by the Hoopa Tribal Police Department or any other officers authorized by the Hoopa Valley Tribal Council. Violations of this Act shall be subject to the jurisdiction of the Hoopa Valley Tribal Court and the penalties prescribed herein. Any Tribal enforcement officer shall have the authority to stop any person within the exterior boundaries of the Hoopa Valley Reservation who is suspected to be in violation of this Act, regardless of tribal membership, property and road ownership status.

15.15.2 Issuance of Citations

Any Tribal law enforcement officer, or any person officially appointed by the Hoopa Valley Tribal Council in consultation with the Chief of the Hoopa Tribal Police Department, may issue a citation for violation of this Act.

15.15.3 Exclusive Tribal Court Jurisdiction

Adjudication of violations of this Act shall be exclusively within the jurisdiction of the Tribal Court.

15.15.4 Penalties/Disposal of Private Property

a) Any person who violates this Act shall be fined a civil penalty not to exceed \$1,000, or by imposition of treble damages, without a requirement of a showing of willfulness or intent, based upon the highest stumpage value obtainable from the raw materials involved in the trespass, or by fine and treble damages, and payment of reasonable costs associated with the enforcement of this Act and any other amounts authorized pursuant to 25 Code of Federal Regulations, Section 163.29. Any person who violates this Act may also be subject to exclusion from the Hoopa Valley Reservation in accordance with the Exclusion Ordinance of the Hoopa Valley Tribe.

b) All private property seized for violations of this Act may be forfeited to the Tribe as directed by the Tribal Court Judge. The Tribal Court shall assume control over all forfeited property and shall dispose of such property as provided by the applicable rules of the Law and Order Code or as directed by the Tribal Council through appropriate resolution. Natural resources seized under this Act may be used for the benefit of Tribal elders or may be sold and revenues from such sales shall be used for enforcement of this Act.

c) Any cash or other proceeds realized from forfeiture of equipment or other goods or from forest products damaged or taken in the trespass shall be applied to satisfy civil penalties and other damages identified in this Act in accordance with 25 Code of Federal Regulations, Section 163.29(b).

15.16 APPEALS OF ADMINISTRATIVE ACTION

The Decision of the Issuing Agent to issue, deny, revise, suspend or terminate, or of any enforcement officer to temporarily suspend, a permit issued under this Act may be appealed by filing a complaint in the Tribal Court within ten (10) days following such action. For purposes of this Act, "days" shall mean calendar days.

15.17 SEVERABILITY

If any part of this Act is held to be invalid the remainder shall remain in full force and effect to the maximum extent possible.

15.18 WAIVER OF SOVEREIGN IMMUNITY

Nothing in this Act is intended to, nor should it be construed as, a waiver of the protections of sovereign immunity, including those of suit in any court, other than Tribal Court.

Furthermore, this Act is not intended to, nor shall it be construed as, establishing or recognizing any rights or interests in any tribal resources, property, lands, or other tribal holdings, to any person to whom a permit may be issued, nor shall this Act be construed as recognizing any authority in any other jurisdiction.

CERTIFICATION

I, the undersigned, as Vice-Chairman of the Hoopa Valley Tribal Council, do hereby certify that the Hoopa Valley Tribal Council is composed of eight (8) members of which at least five (5) were present, constituting a quorum at a Special Meeting thereof; duly and specially called, noticed, convened and held this 3rd day of November, 1999; and that this Ordinance was duly adopted by a vote of four (4) in favor, none (0) opposed and none (0) abstaining and that said Ordinance has not been rescinded, amended or modified in any way.

Dated this 3rd day of November, 1999.

Joseph LeMieux, Vice-Chairman
Hoopa Valley Tribal Council

ATTEST: _____
Darcy A. Baldy, Executive Secretary
Hoopa Valley Tribal Council